

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rate Adjustment Due to Extraordinary or
Exceptional Circumstances

Docket No. R2010-4R

RESPONSE OF PUBLIC REPRESENTATIVE TO MOTION OF THE UNITED STATES
POSTAL SERVICE TO STAY ITS REQUEST FOR EXIGENT RELIEF

(October 11, 2011)

On September 20, 2010, the Postal Regulatory Commission (Commission) issued an Order Resolving Issues on Remand (Order No. 864).¹ As directed by the United States Court of Appeals for the District of Columbia Circuit, the Commission interpreted the causal nexus created by the phrase “due to” when determining how closely the amount of a price adjustment must match the amount of the revenue lost as a result of an exigent circumstance.² This completed the task on remand assigned to the Commission by the Court.

In Order No. 864, the Commission also discussed potential further procedures if the United States Postal Service (Postal Service) chose to pursue its exigent request³ in light of the Commission’s newly issued causal nexus interpretation. The Commission directed the Postal Service to file a statement, by October 4, 2011, “indicating whether and how it wishes to pursue its pending Exigent Request.” Order No. 864 at 54.

¹ *United States Postal Service v. Postal Regulatory Commission*, 640 F.3d 1263 (D.C. Cir. 2011), denying in part and granting in part a Postal Service petition for review of Order No. 547. Docket No. R2010-4, Order Denying Request for Exigent Rate Adjustments, September 30, 2010 (Order No. 547).

² 640 F.3d at 1268; *see also* 39 U.S.C. 3622(d)(1)(E).

³ *See* Exigent Request of the United States Postal Service, July 6, 2010 (Request).

In lieu of specifically following the Commission's directive, the Postal Service, on October 4, 2011, filed a Motion of the United States Postal Service to Stay its Request for Exigent Relief (Motion). The Postal Service requests to delay any further proceedings until December 15, 2011.

The Postal Service states it seeks resolution of recent legislative activity before making a decision on the merits of pursuing its exigent request. It states "[t]here are currently pending bills that would impose *supra-cap* increases on underwater mail classes, as well as a bill that would allow the establishment of break-even rate levels totally independent of the cap." Motion at 3. It notes, "[in] addition, the President has presented legislative initiatives that would allow the Postal Service to increase rates consistent with its July 2010 exigent request without any participation by the Commission." *Id.*

The Public Representative opposes any Postal Service efforts to further delay resolution of the instant exigent Request. Delay belittles the significance of adjusting prices on an "expedited basis" due to either extraordinary or exceptional circumstances. See 39 U.S.C. 3622(d)(1)(E). The concept of delay is inapposite to the intent of the statute, which is to provide rapid financial relief to the Postal Service when circumstances arise that cannot be dealt with in the normal course of business.

The Postal Service brings into question whether it is addressing a true exigent circumstance. There always will be legislative initiatives before Congress, which may or may not be acted upon. If the Request represents an exigent circumstance warranting expedited relief, the Postal Service would not be wise to delay resolution of the Request based on the distant chance that Congress might provide some other form of relief.⁴

Because the Postal Service apparently is not in a position to go forward with its Request at this time, the Commission may opt to end the instant proceeding. The Public Representative notes that the Postal Service always may file a new exigent rate

⁴ There also is a time after which the relevance of a past exigent circumstance must be questioned. That time appears to be approaching in this docket.

request (arguable even based upon the same or similar facts). If the Postal Service files a new request, the Commission and all participants may benefit by the Postal Service having the opportunity to clearly define the alleged exigency, and present argument based on the new standard established by the Commission in Order No. 864.

In conclusion, the Public Representative opposes the Postal Service's Motion, and requests that the Commission bring this proceeding to a rapid conclusion. The Public Representative respectfully submits the foregoing response for the Commission's consideration.

Respectfully submitted,

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